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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.**

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

CC Docket #96-98
~~60/100-11-30~~

Request by ALTS for)
Clarification of the)
Commission's Rules Regarding) CCB/CPD 97-30
Reciprocal Compensation for)
Information Service Provider)
Traffic)

**INTERMEDIA COMMUNICATIONS INC.
REPLY COMMENTS IN SUPPORT OF
ALTS REQUEST FOR LETTER RULING**

Intermedia Communications Inc. ("Intermedia"), by its undersigned counsel and pursuant to the Public Notice¹ issued by the Commission on July 2, 1997, hereby submits its reply to comments on the Association for Local Telecommunications Services ("ALTS") request for a letter ruling confirming that local calls to internet service providers ("ISPs") are subject to mutual compensation under Section 252 of the Telecommunications Act of 1996. Intermedia will show herein that the Commission should expeditiously grant the ALTS Request and issue a letter ruling clarifying that incumbent local exchange carriers ("ILECs") may not impose interstate access charges on such traffic, but instead must provide reciprocal compensation for the transport and termination of local calls to internet service providers.

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¹ Public Notice, DA 97-1399, "Pleading Cycle Established for Comments on Request by ALTS for Clarification of Commission's Rules Regarding Reciprocal Compensation for Information Service Provider Traffic," rel. July 2, 1997.

I. THE RECORD IN THE INSTANT PROCEEDING DEMONSTRATES THAT LOCAL CALLS TO ISPs ARE SUBJECT TO MUTUAL COMPENSATION

The record in this proceeding conclusively rebuts ILEC claims that intra-exchange calls to ISPs are not local calls, and so are not subject to mutual compensation arrangements in interconnection agreements. As a number of non-ILEC commentators made clear, most internet transmissions consist of two elements: 1) a local call from the end user to the ISP using the public switched network, and 2) an enhanced data transmission over the internet conducted by the ISP.² The basic segment of the transmission, from the end user to the ISP, typically originates and terminates within the same local calling area. As such, it constitutes "exchange service" within the meaning of Section 251(c)(2) and other relevant sections of the Telecommunications Act of 1996.³

The initial comments in this proceeding demonstrate that current ILEC practice supports the position that calls to ISPs currently are -- and should continue to be -- defined as local traffic. Several commentators demonstrate that state regulators have determined, and ILECs themselves have admitted, that ILECs currently charge local rates for calls to ISPs.⁴ ILECs have for years reported such calls as local in their ARMIS reports and in information submitted for separations purposes. Indeed, during the time ILECs negotiated the existing

² See, e.g., Adelphi et al, at 15-16, and *passim*; Teleport at 4; US Xchange at 3-4; Hyperion at 6-7; ACC at 6; Cox at 9-11; Vanguard at 5-6; Focal at 7; and SpectraNet International at 2-3.

³ Intermedia at 2-3.

⁴ ACC at 5-6 (citing ACC complaint against New York Telephone and response by the New York Public Service Commission Staff to same); AT&T at 4 (citing, *inter alia*, comments of U S West in FCC CC Docket No. 96-262); Teleport at 6 (citing finding of Minnesota Public Utilities Commission).

interconnection agreements, they never sought to exclude calls to ISPs, and accepted such traffic for mutual compensation without complaint when these interconnection agreements were implemented. For example, in the Bell Atlantic letter to Intermedia announcing its attempt to discontinue mutual compensation for ISP traffic, Bell Atlantic admits that "BA may have also included some ISP traffic in the local call compensation that it bills to CLECs."⁵ In light of this well-documented and longstanding practice, it is disingenuous for the ILECs to now argue that such calls constitute interstate traffic. Rather, this position is a transparent attempt to exclude a significant -- and growing -- class of competitors' services from the interconnection and mutual compensation obligations imposed on ILECs by the Telecommunications Act of 1996.

The record in this proceeding also makes abundantly clear that defining calls to ISPs as local service is fully consistent with the Commission's Competitive Carrier decisions dating back to 1983. These decisions consistently have been reaffirmed up through the Access Reform Order issued in May of this year, which orders the assessment of access charges on ISPs and other enhanced service providers. Other recent Commission precedent also supports the definition of calls to ISPs as local calls. In late 1995, the Commission issued an order finding defining frame relay service as a basic service.⁶ In so doing, the Commission recognized that the basic transmission component must be severed from the

⁵ Intermedia at Attachment A.

⁶ Independent Data Communications Manufacturers Association, Inc. Petition for Declaratory Ruling That AT&T's InterSpan Frame Relay Service is a Basic Service; and AT&T Petition for Declaratory Ruling That All IXCs Be Subject to the Commission's Decision on the IDCMA Petition, DA 95-2190, *Memorandum Opinion and Order*, 10 FCC Rcd 13717 (1995).

enhanced components of the service for regulatory and pricing purposes.⁷ Applied to the instant proceeding, this rationale fully supports a regulatory approach that distinguishes between the basic call from the end user to the ISP and the enhanced transmission from the ISP over the internet. It is precisely this approach that is promoted by parties supporting the ALTS request for a letter ruling.

The record in this proceeding also makes clear that the relief sought by ALTS is the only practical means of ensuring compliance with the Commission's policies prohibiting assessment of access charges on ISPs. There are only three ways that calls to ISPs can be handled over an interconnection arrangement: they can be deemed local, in which case mutual compensation rates or bill and keep apply (depending on the terms of the interconnection agreement); 2) they can be deemed interstate or intrastate toll, in which case access charges apply; or 3) they can be transported and terminated without charge. Option two would violate the Commission's determination that ILECs may not impose access charges on ISPs,⁸ and would be inconsistent with the Administrations's recent statement supporting policies that support the growth of internet service applications.⁹ Neither the Commission nor state regulators are empowered to require the provision of service without compensation, and so option three is not viable. In fact, only option one -- a finding that calls to ISPs are fully subject to the mutual compensation arrangements established in the underlying interconnection agreements -- is viable.

⁷ *Id.* at ¶ 41.

⁸ *Access Charge Reform*, CC Docket No. 96-262, CC Docket No. 94-1, CC Docket No. 91-213, CC Docket No. 95-72, FCC 97-158, rel. May 16, 1997.

⁹ *Intermedia* at 4-5, citing recent Clinton Administration Policy Paper.

Finally, the Commission is fully empowered to provide the relief requested by ALTS. The Commission's authority to declare that calls to ISPs do not constitute jurisdictionally interstate traffic, and so must be exempt from interstate access charges, is uncontested in this proceeding.¹⁰ Similarly, ILECs do not impose access charges on calls to ISPs that they own, or on ISP traffic that is handed off to neighboring ILECs. The Commission is fully empowered under Section 202 of the Communications Act to issue a ruling that ILECs may not discriminate against ISP traffic from competitive carriers by refusing to provide them with the same treatment.

As the comments in this proceeding demonstrate, the letter ruling sought by ALTS is necessary to prevent patently anticompetitive conduct by ILECs, is fully consistent with established Commission precedent and policy, and is fully within the Commission's jurisdiction. Intermedia therefore urges the Commission to act expeditiously to grant the ALTS Request.

II. CONCLUSION

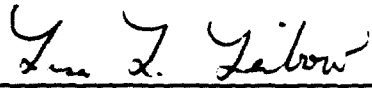
For the reasons discussed above, Intermedia strongly supports ALTS' request for a letter ruling and respectfully requests that the Commission expeditiously issue a letter ruling clarifying that ILECs may not impose access charges, but rather must provide reciprocal

¹⁰ The ALTS Request does not ask the Commission to establish rates for the transport and termination of ISP traffic, or to review terms of arbitrated interconnection agreements. As such, the Commission's authority to grant the relief sought by ALTS is wholly unaffected by the recent decision of the United States Court of Appeals for the Eighth Circuit's decision vacating some of the Commission's interconnection rules. *Iowa Utilities Board, et. al. v. Federal Communications Commission et. al.*, Slip Opinion, No. 96-3321 (8th Cir. July 18, 1997).

compensation for the transport and termination of local calls to internet service providers.
Issuance of such a letter reaffirming the Commission's position relative to ISP traffic is
clearly warranted and within the Commission's purview.

Respectfully submitted,

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